IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1157 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMLESH @ KAMLI DAYARAM JASVANI (SINDHI)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1157 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MS B.R.GAJJAR, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/08/2001

ORAL JUDGEMENT

By filing this petition under Article 226 of the Constitution, petitioner/detenu who has been detained by the Commissioner of Police, Ahmedabad City, Ahmedabad

vide order dated January 23, 2001 in exercise of the powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short hereinafter), has assailed the order of detention on various grounds and prayed to issue writ of habeas corpus or any other appropriate writ or order quashing and setting aside the impugned order of detention and further prayed to set him at liberty forthwith.

2. The grounds of detention order dated January 23, 2001 manifest that the petitioner is a prohibition bootlegger within the meaning of Section 2(b) of the Act and he is carrying on the alleged anti-social activities pertaining to illegal business within the jurisdiction of Ahmedabad City. The detaining authority, therefore, relied upon two cases against the petitioner/detenue vide CR No. 49 of 2001 dated January 7, 2001 and 1 of 2001 dated January 21, 2001 registered with Prohibition station North Division and PCB Ahmedabad City respectively for commission of the offences under the Act.

3. It is contented by the petitioner that the detaining authority has relied upon the statement of two witnesses recorded on Jaunary 21, 2001 which were verified by the detaining authority on January 22, 2001 and immediately thereafter on the next date i.e. on January 23, 2001, order of detention came to be passed. Therefore, the detaining authority has not applied his mind properly before passing the impugned order of detention and hence, the said order of detention is vitiated as the Commissioner of Police, Ahmedabad City, Ahmedabad has not recorded the subjective satisfaction before passing the impugned order.

4. I have heard Mr. H.R.Prajapati, learned Advocate for the petitioner and Ms B.R.Gajjar, learned AGP for the respondent. I have also perused the averments made in the petition and the statement of the witnesses recorded by the sponsoring authority which were verified by the detaining authority which are annexed to the petition.

5. On having perusal of the record of the case it is clear that against the petitioner two cases for commission of the offences under the Prohibition Act have been registered and the sponsoring authority has recorded the statements of two witnesses on January 21, 2001 which came be verified on January 22, 2001 by the detaining authority and the impugned order of detention came to be passed on January 23, 2001. The learned AGP has not

pointed out as to whether before recording the impugned order of detention the detaining authority has recorded the subjective satisfaction.

6. A similar question arose before this Court in the case of Ranubhai B. Bharwad Vs. State of Gujarat & Others - 2000(3) GLR page 2696. In the said case proposal of detention was received on August 27, 1999, verification of statements of three witnesses were made by detaining authority on August 29, 1999 and detention order was passed on August 30, 1999. Therefore, it was held that the exercise of the powers by the detaining authority was a mechanical one, devoid of application of mind and, therefore, detention order was quashed.

7. The ratio laid down in Ranubhai's case (supra) squarely applies to the facts of the present case. At the cost of repetition be it stated that within 3 days entire process of detention was completed by the detaining authority. Therefore, it is clear that the detaining authority has passed the impugned order of detention in a mechanical manner and hence it suffers from the vices of non-application of mind. Therefore, order of detention is vitiated and deserves to be quashed and set aside.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated January 23, 2001 is hereby quashed and set-aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*